

Message Text

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ACTION SAB-02

INFO OCT-01 ARA-10 ISO-00 SSO-00 SS-15 INR-07 INRE-00

SP-02 L-03 PRS-01 USIE-00 NSCE-00 CIAE-00 DODE-00

PM-05 H-01 NSAE-00 NSC-05 PA-01 /053 W

-----042718 152127Z /75

O 151750Z AUG 77

FM AMEMBASSY PANAMA

TO SECSTATE WASHDC IMMEDIATE 3175

C O N F I D E N T I A L SECTION 1 OF 2 PANAMA 5798

FOR S/AB, L & ARA/PAN FROM KOZAK AND CHESTER

E.O. 11652: GDS

TAGS: PBOR, PN

SUBJECT: PANAMA CANAL TREATY NEGOTIATIONS: DRAFTING

1. WEEKEND DRAFTING SESSIONS WERE HELD SATURDAY 8AM TO 1:15 PM AND SUNDAY 9 AM TO 12:45 PM. SATURDAY'S MEETING WENT WELL AND CONSIDERABLE PROGRESS RESULTED. SUNDAY WAS NOT PRODUCTIVE AS PANAMANIAN TEAM SPENT HALF OF THE TIME ARGUING AMONG THEMSELVES. AMBASSADOR MORGAN WILL ATTEMPT TO ALLEVIATE HAGGLING OVER LANGUAGE OF SPANISH VERSIONS OF ARTICLES BY CONFORMING ENGLISH AND SPANISH VERSIONS IN ADVANCE OF MONDAY'S MEETING. TENTATIVE SCHEDULE FOR MONDAY, A PANAMANIAN HOLIDAY, IS 8-12 AND 3-6. AT END OF SUNDAY'S MEETING MINISTER ROYO PREDICTED THURSDAY OR FRIDAY FOR THE COMPLETION OF OUR TASK; WE STILL REMAIN SOMEWHAT MORE OPTIMISTIC.

2. PANAMANIAN TEAM VERY ANXIOUS TO GET FINAL AGREEMENT ON DRAFT TO THE EXTENT POSSIBLE BEFORE WE LEAVE. WE FEEL THAT, ALTHOUGH PANAMANIAN TEAM CLEARLY UNDERSTAND DRAFTS AND AD REFERENDUM, IT WILL BE EASIER TO WORK OUT CHANGES IN JOINT DRAFTS IF AS MANY PROBLEMS AS POSSIBLE COULD BE SOLVED WITH THEM WHILE WE ARE STILL HERE AND MOMENTUM ESTABLISHED. THEREFORE REQUEST DEPARTMENT TRANSMIT COORDINATED COMMENTS ON JOINT TEXTS AS R REVIEW IN WASHINGTON IS COMPLETED ON EACH ARTICLE.

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EM TEXTS OF JOINT DRAFTS FOLLOW:

ARTICLE VIII FLAGS

(U.S. DRAFT IMPLEMENTING AGREEMENT ARTICLE IX)

"1. THE ENTIRE TERRITORY OF THE REPUBLIC OF PANAMA, INCLUDING

THE AREAS THE USE OF WHICH THE REPUBLIC MAKES AVAILABLE TO THE UNITED STATES OF AMERICA PURSUANT TO THIS TREATY AND RELATED AGREEMENTS, SHALL BE UNDER THE FLAG OF THE REPUBLIC OF PANAMA, AND CONSEQUENTLY SUCH FLAG SHALL ALWAYS OCCUPY THE POSITION OF HONOR.

2. THE FLAG OF THE UNITED STATES OF AMERICA MAY BE DISPLAYED, TOGETHER WITH THE PANAMANIAN FLAG, AT THE HEADQUARTERS OF THE PANAMA CANAL COMMISSION, AND AS PROVIDED IN THE AGREEMENT IN IMPLEMENTATION OF ARTICLE V OF THIS TREATY.

3. THE FLAG OF THE UNITED STATES OF AMERICA ALSO MAY BE DISPLAYED AT OTHER PLACES AND ON SOME OCCASIONS, AS AGREED BY BOTH GOVERNMENTS IN THE COORDINATION COMMITTEE."

4. WE RAISED WITH PANAMA OUR UNDERSTANDING THAT AGREEMENT HAD HAD BEEN REACHED AT THE NEGOTIATING TABLE TO ADD SENTENCE: "NO FLAGS WILL FLY AT THE ENTRANCES TO THE CANAL." ROYO INSISTS AGREEMENT WAS THAT NO MENTION WOULD BE MADE IN THE TREATY OF FLAGS AT THE ENTRANCES TO THE CANAL. REQUEST WASHINGTON'S RECOLLECTION OF AGREEMENT REACHED AND AMBASSADORS' GUIDANCE ON WHETHER WE SHOULD RE-RAISE MATTER AGAIN.

5. ARTICLE IX PRIVILEGES AND IMMUNITIES

(U.S. DRAFT ARTICLE V)
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P. 14 ADD NEW SENTENCE AT END OF PARAGRAPH 1 AS FOLLOWS:
"THE TWO GOVERNMENTS SHALL AGREE ON PROCEDURES TO PROVIDE FOR CRIMINAL INVESTIGATIONS AT SUCH LOCATIONS BY THE REPUBLIC OF PANAMA."

LINE 10 DELETE "IN ALL MATTERS"

2) LINE 15, 75, CHANGED TO 20.

6. ARTICLE X APPLICABLE LAWS, LAW ENFORCEMENT AND JUDICIAL MATTERS
(U.S. DRAFT ARTICLE VI)

JOINT TEXT ACHIEVED ON PARAGRAPHS 1 AND 4-6. PARAGRAPHS 2 AND 3 EXPANDED INTO 6 PARAGRAPHS. MESSAGE RECEIVED WITH EXCELLENT SUGGESTION FOR MODIFICATION OF NEW PARAGRAPHS 2 AND 7, BUT MATTERS NOT YET RAISED WITH PANAMANIANS.

JOINT DRAFT OF PARAGRAPH 1 AND OLD PARAGRAPH 4-6, NOW 8-10, FOLLOWS:

"1. IN ACCORDANCE WITH THE PROVISIONS OF THIS TREATY AND RELATED AGREEMENTS, THE LAWS OF THE REPUBLIC OF PANAMA SHALL APPLY IN THE AREAS MADE AVAILABLE FOR THE USE OF THE UNITED STATES OF AMERICA PURSUANT TO THIS TREATY. HOWEVER, THE LAWS OF THE

REPUBLIC OF PANAMA SHALL NOT BE APPLIED TO ANY MATTER OR EVENT WHICH OCCURED IN THE FORMER CANAL ZONE PRIOR TO THE ENTRY INTO FORCE OF THIS TREATY, EXCEPT AS PROVIDED IN PRIOR TREATIES AND AGREEMENTS.

8. THE REPUBLIC OF PANAMA SHALL NOT TAKE, ISSUE, ADOPT OR ENFORCE ANY LAWN DECREE, REGULATION, INTERNATIONAL AGREEMENT OR OTHER ACTION WHICH PURPORTS TO REGULATE OR WOULD OTHERWISE INTERFERE WITH THE EXERCISE ON THE PART OF THE UNITED STATES OF AMERICA OF ANY RIGHT CRANTED UNDER THIS TREATY OR RELATED AGREEMENTS.

9. VESSELS TRANSITING THE CANAL AND CARGO, PASSENGERS AND CREW CARRIED OF SUCH VESSELS, SHALL BE EXEMPT FROM ANY TAXES, FEES, CONFIDENTIAL

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OR OTHER CHARGES BY THE REPUBLIC OF PANAMA. HOWEVER, IN THE EVENT SUCH VESSELS CALL AT A PANAMANIAN PORT, THEY MAY BE ASSESSED CHARGES INCIDENT THERETO, SUCH AS CHARGES FOR SERVICES FROVIDED TO THE VESSEL. THE REPUBLIC OF PANAMA MAY ALSO REQUIRE THE PASSENGERS AND CREW DISEMBARKING FROM SUCH SHIPS TO PAY SUCH TAXES, FEES, AND CHARGES AS ARE ESTABLISHED UNDER PANAMANIAN LAW FOR PERSONS ENTERING ITS TERRITORY. SUCH TAXES, FEES, AND CARGES SHALL BE ASSESSED ON A NONDISCRIMINAORY BASIS.

10. THE REPUBLIC OF PANAMA AND THE UNITED STATES OF AMERICA WILL COOPERATE IN TAKING SUCH STEPS AS MAY FROM TIME TO TIME BE NECESSARY TO GUARANTEE THE SECURITY OF THE PANAMA CANAL COMMISSION, ITS EMPLOYEES AND THEIR DEPENDENTS AND PROPERTY, THE UNITED STATES FORCES AND THE MEMBERS THEREOF, THE CIVILIAN COMPONENT OF THE UNITED STATES FORCES, THE DEPENDENTS OF MEMBERS OF THE FORCES AND THE CIVILIAN COMPONENT AND THEIR PROPERTY, AND THE CONTRACTORS OF THE PANAMA CANAL COMMISSION AND OF THE UNITED STATES FORCES, THEIR DEPENDENTS, AND THEIR PROPERTY. THE REPUBLIC OF PANAMA WILL SEEK THE ISSUANCE OF SUCH LEGISLATION AS MAY BE NEEDED TO CARRY OUT THE FOREGOING PURPOSES AND TO PUNISH ANY OFFENDERS."

UM ARTICLE XI - CRIMINAL JURISDICTION

(ARTICLE X U.S. DRAFT IMPLEMENTING AGREEMENT)

P. 32 LINE 1 DELETE "HAVENZ SUBSTITUTE THEREFORE "EXERCISE IN THE MANNER HEREIN INDICATED ITS." LINE4 AFTER "COMMITTED" INSERT "BY THEM." LINE 7 DELETE "SUCH" LINE 8 DELETE "ALSO." LINE 9 DELETE "UNITED STATES LAW" AND SUBSTITUTE "THE LAWS OF BOTH COUNTRIES."LINE 11 DELETE "TO" AND SUBSTITUTE "IN FAVOR OF." DELETE SENTENCE BEGINNING LINE 11 AND SUBSTITUTE FOLLOWING: "SAID AUTHORITIES SHALL, IN THEIR REQUEST, STATE THE REASONS THEREFOR, AND THE REPUBLIC OF PANAMA SHALL GIVE FAVORABLE CONSIDERATION TO SUCH REQUESTS IN THE FOLLOWING CASES:" CONFIDENTIAL

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LINE 15 AND SENTENCE AFTER "DUTY." LINE 16 BEGIN NEW SENTENCE,
DELETE "WHICH" AND SUBSTITUTE "SUCH." LINE 18 DELETE
"AUTHORITIES OF THE UNITED STATES" AND SUBSTITUTE "LATTER."
LINE 6 DELETE "IS REQUIRED" AND SUBSTITUTE "MAY BE NECESSARY."

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ACTION SAB-02

INFO OCT-01 ARA-10 ISO-00 SSO-00 SS-15 INR-07 INRE-00
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PM-05 H-01 NSAE-00 NSC-05 PA-01 /053 W
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FM AMEMBASSY PANAMA

TO SECSTATE WASHDC IMMEDIATE 3176

C O N F I D E N T I A L SECTION 2 OF 2 PANAMA 5798

FOR S/AB, L & ARA/PAN FROM KOZAK AND CHESTER

P. 34 PARAGRAPH 4 DELETED ENTIRELY. PARAGRAPHS RENUMBERED
ACCORDINGLY.

P. 35 DELETE LINE 13-16 AND SUBSTITUTE: "(A) THE UNITED STATES
AUTHORITIES SHALL GIVE FULL CONSIDERATION TO SPECIAL REQUESTS
MADE BY THE AUTHORITIES OF THE REPUBLIC OF PANAMA REGARDING
CONDITIONS OF CUSTODY OF ANY DETAINEE IN THE CUSTODY OF
THE UNITED STATES."

LINE 17-18 DELETE "OR HAS BEEN DELIVERED INTO."

PANAMA HAS ADDED A PARAGRAPH 12 WHICH WOULD CONTAIN THE
LANGUAGE REGARDING AN AGREEMENT FOR TRANSFER OF SANCTIONS
FROM U.S. DRAFT ARTICLE VII LINES 7-11. DESPITE OUR EXPLANA-
TION OF U.S. CONSTITUTIONAL CONSIDERATIONS, PANAMA UNHAPPY
WITH WORDING. PANAMA WANTED TO REFER TO NATIONALS OF EITHER
COUNTRY RATHER THAN DOMICILIARIES. IN THE FACE OF OUR
RESISTANCE, THEY PROPOSE REFERING ONLY TO AN AGREEMENT TO BE
CONCLUDED, WITHOUT REFERENCE TO WHO WOULD BE COVERED.

REQUEST GUIDANCE AND NEW LANGUAGE IF POSSIBLE.

8. ARTICLE XVI TRANSITIONAL PROVISIONS

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(U.S. DRAFT ARTICLE VII)

P. 20 LINE 6 - PANAMA PREFERS TO DELETE "CALENDAR," BUT WILL ACCEDE TO ITS REMAINING IF WE CAN PROVIDE AN EXPLANATION FOR WHY IT IS NECESSARY. PLEASE ADVISE. LINE 14, INSERT AFTER "INAL" "AND CIVIL."

PAGE 21 LINE 5 INSERT AT END "IN THE FOLLOWING CASES:"

LINE 20 DELETE "ARISING OUT OF OFFENSES" AND SUBSTITUTE "RELATING TO CRIMES."

LINE 21 DELETE "AGAINST" AND SUBSTITUTE "IN VIOLATION OF."

PAGE 23 LINE 1 INSERT AFTER "JURISDICTION" " DURING THE TRANSITION PERIOD"

LINE 12 INSERT AFTER "JURISDICTION" "ONLY."

P. 24 LINE 2 DELETE "IN THIS REGARD" AND SUBSTITUTE "BY AN EXCHANGE OF NOTES OR OTHER INSTRUMENTS" (LOPEZ-GUEVARA INSISTS THAT PANAMA'S CONSTITUTIONAL REQUIREMENTS FOR EXECUTIVE AGREEMENTS AND TREATIES ARE IDENTICAL AND THUS TERM "EXCHANGE OF NOTES" MUST BE USED TO AVOID RATIFICATION PROCEDURES. WE DO NOT RECALL THAT THIS HAS BEEN THE PRACTICE IN THE PAST AND WOULD APPRECIATE YOUR PROVIDING US SOME PRECEDENTS TO CITE TO HIM.)

LINE 5 DELETE "REPUBLIC OF PANAMA" AND INSERT "AREAS AND INSTALLATIONS MADE AVAILABLE FOR THE USE OF THE UNITED STATES OR AMERICA BY THE REPUBLIC OF PANAMA PURSUANT TO THIS TREATY AND RELATED AGREEMENTS."

9. AS A FOLLOW-UP TO THE AMBASSADORS' DISCUSSION WITH ROYO AT THE CONFIDENTIAL

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NEGOTIATING TABLE, WE PROPOSED AND PANAMA IN ROYO'S ABSENCE TENTATIVELY AGREED TO FOLLOWING; SUBSTITUTE AGREED MINUTE CONCERNING PARAGRAPH 2 OF ARTICLE XI:

"WITH REFERENCE TO PARAGRAPH 2 OF ARTICLE XI OF THIS TREATY,

IT IS UNDERSTOOD THAT, AS A MATTER OF GENERAL POLICY, THE
REPUBLIC OF PANAMA WILL WAIVE JURISDICTION TO THE UNITED STATES,
AT ITS REQUEST, IN THESE CASES."

ON SUNDAY ROYO DEFERRED FURTHER CONSIDERATION OF THIS MINUTE,
ALTHOUGH THEIR DISCUSSION AMONG THEMSELVES LEADS US TO BELIEVE
THEY FIND IT ACCEPTABLE.

10. ARTICLE XX ENTRY AND DEPARTURE

(U.S. DRAFT IMPLEMENTING AGREEMENT ARTICLE XV)

P. 58 LINES 4-5 DELETE "AS THE TWO GOVERNMENTS MAY OTHERWISE
AGREE" AND SUBSTITUTE "FOR SUCH OTHER PURPOSES AS THE TWO
PARTIES MAY AGREE UPON."

LINE 9 DELETE "UNDER THE AUTHORITY OF" AND SUBSTITUTE "BY".
DELETE LINES 10-12 AND SUBSTITUTE "PANAMA. SUCH DOCUMENTATION
SHALL, UPON ENTRY INTO OR DEPARTURE FROM THE COUNTRY, BE
PRESENTED TO THE APPROPRIATE AUTHORITIES OF THE REPUBLIC OF
PANAMA."

LINE 18 DELETE "MINISTRATION, AND" AND SUBSTITUTE "MINISTRATION.
SUCH PERMITS."

LINES 18-19 DELETE "FOLLOWING THEIR ISSUANCE."

LAST LINE OF PARAGRAPH 4 DELETE "AND ADMINISTER"

P. 60 LINE 2 AFTER "PANAMA" ADD "EXCEPT FOR CHARGES ESTABLISHED
OR WHICH MAY BE ESTABLISHED FOR USE OF AIRPORTS"

LINE 11-12 DELETE "THEY SHALL LIMIT THEIR PROFESSIONAL ACTIVITY"
AND SUBSTITUTE "THEIR PROFESSIONAL ACTIVITY SHALL BE LIMITED."

11. ARTICLE SERVICES AND INSTALLATIONS

(U.S. DRAFT IMPLEMENTING AGREEMENT ARTICLE XV)

P. 61 DELETE LINES 8-14. RENUMBER REMAINING PARAGRAPHS ACCORD-
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INGLY.

P. 62 LINES 10-11 DELETE "EXCEPT AS THE TWO GOVERNMENTS MAY
OTHERWISE AGREE."

LINE 13 INSERT AFTER "AVAILABLE," "EXCLUSIVELY FOR OFFICIAL
PURPOSES,"

12. INTRODUCTION OF AGREEMENT IN IMPLEMENTATION.

LINES 8-10 DELETE EVERYTHING AFTER "RESPONSIBILITIES,"
AND SUBSTITUTE "IN ACCORDANCE WITH THE PANAMA CANAL TREATY
AND THIS AGREEMENT."

13. ARTICLE I OF IMPLEMENTING AGREEMENT

DEFINITIONS

LINE 17 DELETE "AS EXCEPTIONS"

14. AGREED MINUTE TO PARAGRAPH 2(B) OF ARTICLE 1

LINE 14 ADD NEW SENTENCE "HOWEVER, THIS PROVISION WILL NOT

APPLY TO NATIONALS OF THIRD COUNTRIES RECRUITED WITHIN THE
REPUBLIC OF PANAMA AFTER THE ENTRY INTO FORCE OF THIS
AGREEMENT."

15. PANAMA HAS PROPOSED FOLLOWING DRAFT TEXT FOR AN ARTICLE ON
OFFICIAL LANGUAGES:

"THE OFFICIAL LANGUAGE OF THE PANAMA CANAL COMMISSION WILL
BE SPANISH. ENGLISH WILL BE THE WORKING LANGUAGE."

REQUEST GUIDANCE.

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Message Attributes

Automatic Decaptioning: X
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Concepts: AGREEMENTS, AGREEMENT DRAFT, CANALS, NEGOTIATIONS
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Copy: SINGLE
Sent Date: 15-Aug-1977 12:00:00 am
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
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Executive Order: GS
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Original Handling Restrictions: n/a
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SAS ID: 1602380
Secure: OPEN
Status: NATIVE
Subject: PANAMA CANAL TREATY NEGOTIATIONS: DRAFTING
TAGS: PBOR, EWWT, PN, US
To: STATE
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